

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Joseph G. Bertogli,

Petitioner-Appellant,

v.

Polk County Board of Review,

Respondent-Appellee.

ORDER

**Docket No. 09-77-1292
Parcel No. 010/04755-010-000**

On August 5, 2010, the above-captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Joseph G. Bertogli, was represented by Scott Harris. The Polk County Board of Review designated Assistant County Attorney David Hibbard as its legal representative. Both parties submitted evidence in support of their position. The Appeal Board having reviewed the entire record, heard the testimony and being fully advised, finds:

Findings of Fact

Bertogli is the owner of a residentially classified, single-family residence located at 3507 Southern Woods Drive, Des Moines, Iowa. The property is a two-story home built in 1989, has 3042 square feet of total living area, and a 692 square-foot attached garage built. There is a 1509 square-foot basement with 692 square feet of living-quarter quality finish. The property also has 240 square feet of deck area, 342 square feet of patio area, and three fireplaces. The site is 17,236 square feet and a corner lot.

Bertogli protested to the Polk County Board of Review regarding the 2009 assessment. The January 1, 2009, total assessment of Bertogli's property was \$434,800 allocated as follows: \$40,200 in land value and \$394,600 in improvement value.

Bertogli's claim was based on the following grounds: 1) that the assessment is not equitable as compared with the assessments of other like property in the taxing district under Iowa Code section 441.37(1)(a) and; 2) that the property is assessed for more than the value authorized by law under section under section 441.37(1)(b). Bertogli sought relief to a total assessed value of \$353,000. The Board of Review provided partial relief and reduced the January 1, 2009, total assessed value to \$395,300 allocated as follows: \$40,200 in land value and \$355,100 in improvement value.

In his appeal to this Board, Bertogli reasserted the same grounds, and sought the same relief to a total assessed value of \$353,000. Bertogli offered the sale of a property across the street from his as evidence of inequity. The property located at 8508 Prairie Avenue, Urbandale, Iowa, sold in December 2008 for \$115,000.

Scott Harris testified on behalf of Bertogli. Harris is a real property appraiser but did not complete an appraisal of the Bertogli property. Bertogli offered three properties he considered as comparable to the subject to demonstrate Bertogli's property is assessed for more than authorized by law. These are the three same properties which were submitted to the Board of Review. Only a partial printout of the property record card was supplied to the Board of Review and to this Board. The Board of Review appraiser's summary, included in the certified record, offered additional data such as gross living area, amenities, age, and condition and site size of these three properties. One of the three properties submitted by Bertogli sold in December 2006, and the remaining two properties sold in September and June 2008. We consider the 2006 sale too dated for consideration of a January 1, 2009 value. The remaining two properties, according to the information in the certified record, are on smaller lots, are roughly 400 to 500 square feet smaller in living area, lack any basement finish in comparison to the subject's 960 square-feet of living-quality finish, and have only one fireplace compared to the subject's three fireplaces. There were no comparisons made between the properties submitted and the subject to adjust for differences and to support a market value opinion for a claim of

over-assessment. Harris testified that he did not do an appraisal because he did not feel it was necessary, and that Bertogli was seeking relief primarily based on the claim of inequity.

Harris offered four properties as equity comparables to the Board of Review and the same properties to this Board. However, similar to the market value claim, there was no direct analysis offered comparing these properties to the subject. The properties have an assessed value range of \$339,000 to \$395,200. However, the subject has a grade factor of 1+00, whereas all of the properties submitted by Harris for equity comparison have lower quality grade factors ranging from 1-05 to 2+10. Harris testified that when considering the claim of inequity, he chose sales based upon similarity in size, age and style. He did not determine or develop a fair market value for the four properties to support the claim of inequity by demonstrating the subject was assessed higher proportionately to other like properties. Therefore, we find insufficient evidence has been presented to support a claim the property is inequitably assessed.

The Board of Review submitted an appraisal completed by Cris Swaim of Swaim Appraisal Services. Swaim testified he considered the following criteria when selecting properties for comparison: a value range of \$300,000 to \$500,000, "large" one-and-a-half story or two-story homes located on the southside of Des Moines. We do not believe Swaim's value parameters are appropriate. In this instance, the range is wide and the other criteria considered by Swaim resulted in five comparables within twelve blocks of the subject. Three of the properties are located within three blocks of the subject. The five properties have a wide sales price range of \$327,500 to \$420,000 and an adjusted value range of \$335,900 to \$410,900. The two most proximate properties, located one block or less from the subject, adjusted at \$405,000 and \$410,900 respectively. Swaim concludes a final value of \$375,000. We give most consideration to Swaim's appraisal.

After reviewing all the evidence, we find the preponderance of the evidence supports a finding that Bertogli's property is assessed for more than authorized by law, and its fair market value.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). Bertogli offered four properties as equity

comparables, however no analysis of these properties compared to the subject was made. Neither Bertogli, nor his representative Harris, established that the subject property was indeed assessed higher proportionately than other like properties.

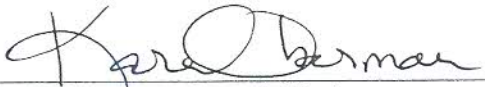
In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). The Board of Review provided an appraisal completed by an independent real property appraiser Cris Swaim which indicated a value of \$375,000 as of the January 1, 2009 assessment.

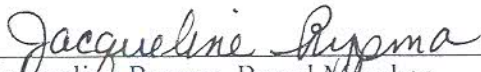
In the opinion of the Appeal Board, the evidence supports the claim that the property is assessed for more than the value authorized by Iowa Code section 441.21. Therefore, we modify the January 1, 2009, assessment of the property located at 3507 Southern Woods Drive, Des Moines Iowa, as determined by the Polk County Board of Review.

THE APPEAL BOARD ORDERS the assessment of Joseph G. Bertogli's property located at 3507 Southern Woods Drive, Des Moines, Iowa, be modified to a total value of \$375,000, representing \$40,200 in land value and \$334,800 in improvements as of January 1, 2009.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Polk County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 22 day of September, 2010


Karen Oberman, Board Chair


Jacqueline Rypma, Board Member

Cc:

Scott D. Harris
5465 Mills Civic Pkwy., Suite 420
West Des Moines, Iowa 50266
APPELLANT

David Hibbard
111 Court Avenue
Room 340
Des Moines, Iowa 50309
ATTORNEY FOR APPELLEE

Jamie Fitzgerald
111 Court Avenue
Des Moines, Iowa 50309
AUDITOR

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>9-22</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u><i>John Chapin</i></u>